

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACOB M. BOSLEY,

Case No. 2:23-cv-2994-JDP (PC)

Plaintiff,

ORDER

v.

TRUCKEE POLICE DEPARTMENT,

Defendant.

Plaintiff, a former county inmate, alleges in his second amended complaint the Truckee Police Department, Placer County Sheriff's Department, Kimco Reality, and unidentified police officers violated his constitutional rights. ECF No. 13. The allegations in the complaint are insufficient to proceed, and plaintiff's complaint will be dismissed with leave to amend.¹

¹ Plaintiff has also requested access to submit digital evidence. ECF No. 14. Generally, "any person appearing pro se may not utilize electronic filing except with permission of the assigned Judge or Magistrate Judge." E.D. Cal. L.R. 133(b)(2). "Requests to use paper or electronic filing as exceptions from these Rules shall be submitted as stipulations as provided in L.R. 143 or, if a stipulation cannot be had, as written motions setting out an explanation of reasons for the exception." E.D. Cal. L.R. 133(b)(3). Plaintiff's motion does not demonstrate good cause to depart from the normal filing procedure for unrepresented litigants. The motion is denied.

Screening and Pleading Requirements

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg ’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

Analysis

The facts of the complaint are difficult at times to follow, but the court understands plaintiff to allege that on several different dates, police officers unlawfully cited, and on one occasion, violently arrested, him for trespassing in parking lots of certain businesses. ECF No. 13 at 3. Plaintiff claims that during this arrest, the police officers seized and destroyed his property.

1 *Id.* at 3-4. He further alleges that while in jail, he has been assaulted and pepper sprayed. *Id.* at 4.
 2 Plaintiff additionally claims that officers conspired against him to deny him his equal protection
 3 rights by stopping him from entering a grocery store. *Id.* at 5. Plaintiff seeks relief under 42
 4 U.S.C. §§ 1982, 1983, 1985, 18 U.S.C. § 245(b)(4)(f), and California's Unruh Act and Tom Bane
 5 Act.

6 As an initial matter, several of the statutes relied upon by plaintiff are inapplicable.
 7 Plaintiff has pled no facts that would give rise to a 42 U.S.C. § 1982 claim. The complaint
 8 contains no allegations that plaintiff was seeking to rent or purchase property, or that he suffered
 9 racially discrimination. *See Phiffer v. Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548, 551 (9th
 10 Cir. 1980) (explaining that a § 1982 claim is one for housing discrimination). The complaint is
 11 also devoid of facts indicating that plaintiff is a member of a protected class. The elements of a
 12 claim under section 1985(3) are: "(1) the existence of a conspiracy to deprive the plaintiff of the
 13 equal protection of the laws; (2) an act in furtherance of the conspiracy; and (3) a resulting
 14 injury."² *I.H. by & through Hunter v. Oakland Sch. for Arts*, 234 F. Supp. 3d 987, 994 (N.D. Cal.
 15 2017). Plaintiff alleges a claim for relief pursuant to 18 U.S.C. § 245(b), yet it is well established
 16 that this federal criminal statute, which permits federal prosecutions for interference with
 17 federally protected rights, does not confer a private right of action for damages. *See Cooley v.*
 18 *Keisling*, 45 F. Supp. 2d 818 (D. Or. 1999); *John's Insulation, Inc. v. Sisak Constr. Co.*, 774 F.
 19 Supp. 156, 163 (S.D.N.Y. 1991).

20 Plaintiff's § 1983 claim suffers from a different defect—the facts are too conclusory. The
 21 complaint contains allegations that police officers harassed him, but he has not identified the date
 22 of these events or any individual officer involved. Moreover, plaintiff alleges that officers used
 23 excessive force against him during the arrest and at the jail, but he fails to identify the officers
 24 who did this. While an arrest without probable cause can violate the Fourth Amendment and give
 25 rise to a claim under § 1983, the complaint's conclusory allegations are not sufficient to state a
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27 ² While the complaint did not identify which section of 42 U.S.C. § 1985 plaintiff is
 28 seeking relief under, it contains three subparts, and subsection (3) provides a cause of action
 against state or private conspiracies. *See Griffin v. Breckenridge*, 403 U.S. 88, 101-02 (1971).

1 cognizable claim for false arrest. *McKenzie v. Lamb*, 738 F.2d 1005, 1007 (9th Cir. 1984);
2 *Greathouse v. City of Fresno*, No. 1:24-CV-00715-JLT-BAM, 2024 WL 4729133, at *3 (E.D.
3 Cal. Nov. 8, 2024).

4 Plaintiff has not sufficiently alleged facts to bring a claim against either the Truckee
5 Police Department or the Placer County Sheriff's Department. To state a *Monell* claim, the
6 complaint must allege that (1) plaintiff was deprived of a constitutional right, (2) the Department
7 has a policy, custom, or practice which amounted to deliberate indifference to that constitutional
8 right; and (3) the policy, custom, or practice was the moving force behind the constitutional
9 violation. *See Dougherty v. City of Covina*, 654 F.3d 892, 900-01 (9th Cir. 2011) (citing *Monell*
10 v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)). “[A] local government may not be sued under
11 § 1983 for an injury inflicted solely by its employees or agents.” *Monell*, 436 U.S. at 694.
12 Instead, a local government may be sued when an employee who committed a constitutional
13 violation was “acting pursuant to an expressly adopted official policy, longstanding practice or
14 custom, or as a final policymaker.” *Thomas v. Cnty. of Riverside*, 763 F.3d 1167, 1170 (9th Cir.
15 2014) (citing *Monell*, 436 U.S. at 694). The complaint makes no allegations that any defendant
16 has a policy, custom, or practice that was the moving force behind plaintiff’s alleged
17 constitutional violation.

18 Finally, plaintiff cannot bring a § 1983 claim against Kimco Realty because he has failed
19 to allege that it was acting under the color of state law. *See* 42 U.S.C. § 1983 (providing a cause
20 of action for *conduct by state actors* that violates an individual’s constitutional rights).

21 In light of the foregoing, plaintiff has failed to adequately plead any federal claim.
22 Therefore, the court declines to address the remaining state law claims. *Decker v. Shasta Cty.*,
23 No. 2:16-cv-1179-KJN (P), 2017 WL 3601382, *3, 2017 U.S. Dist. LEXIS 134358, *8 (E.D. Cal.
24 Aug. 22, 2017) (“Moreover, absent federal claims, this action cannot proceed solely on the basis
25 of state law claims. Although the court may exercise supplemental jurisdiction of state law
26 claims, a plaintiff must first have a cognizable claim for relief under federal law.”).

27 Plaintiff may file an amended complaint. He is advised that the amended complaint will
28 supersede the current complaint. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir.

1 2012) (en banc). This means that the amended complaint will need to be complete on its face
2 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended
3 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
4 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
5 defendant's involvement in sufficient detail. The amended complaint should be titled "Third
6 Amended Complaint" and refer to the appropriate case number.

7 Accordingly, it is ORDERED that:

- 8 1. Plaintiff's second amended complaint, ECF No. 13, is dismissed.
- 9 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended
10 complaint or (2) notice of voluntary dismissal of this action without prejudice.
- 11 3. Failure to timely file either an amended complaint or notice of voluntary dismissal may
12 result in the imposition of sanctions, including a recommendation that this action be dismissed
13 with prejudice pursuant to Federal Rule of Civil Procedure 41(b).
- 14 4. The Clerk of Court shall send plaintiff a complaint form with this order.
- 15 5. Plaintiff's motion to submit digital evidence, ECF No. 14, is denied.

16 IT IS SO ORDERED.

17 Dated: November 20, 2024


18 JEREMY D. PETERSON
19 UNITED STATES MAGISTRATE JUDGE
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